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## Expanding the Definition of Kosher

David Kusnetz, 2009

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Last year, the nation's largest kosher meatpacking plant was the target of the largest illegal immigration raid in U.S. history and thousands of charges were filed for unsafe labor practices. The raid raised eyebrows across the country and inflamed passions within the Jewish community because kosher meat has always had an ethical veneer. A debate began between Jewish scholars over whether kosher meat produced in an unethical manner can really be considered kosher. This paper argues that the dietary kosher laws are replete with implicit lessons on ethical conduct and if the definition of kosher is not expanded to include ethical conditions of production, then the very moral legitimacy that kosher food embodies is jeopardized.

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On May 12, 2008, a meatpacking plant in Postville, Iowa played host to the largest illegal immigration raid in U.S. history. Federal investigators from the U.S. Immigration and Customs Enforcement agency arrested 389 people suspected of being illegal immigrants, mostly from rural Guatemala.<sup>1</sup> Most disturbingly, 9,311 criminal charges involving under-age workers were filed against the plant. The legal age to work at a meatpacking plant is 18, but the investigators charged the plant with employing people who were younger than 16 and allowing them to work with hazardous machinery prohibited for employees under 18 such as, meat grinders and

circular saws.<sup>2</sup> Although the nature of the massive scale of the raid is worthy of attention, the most surprising element of this story is that the meatpacking plant is owned by Agriprocessors, the country's largest producer of kosher meat.<sup>3</sup>

An illegal immigration sting operation at a kosher meatpacking plant raised eyebrows across the country and inflamed passions within the Jewish community because kosher meat has always had an ethical veneer. With many religious regulations concerning the proper slaughter of animals, including a quick and supposedly painless death for an animal and continual inspection by rabbis to

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<sup>1</sup>Joe Friesen, "Hardening the line on illegal workers; Largest immigration raid in U.S. history highlights enduring tensions over who deserves a place in American society," *The Globe and Mail* (Canada), May 24, 2008, International News; Weekend Special: Target Postville, pg. A16.

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<sup>2</sup>Julia Preston. "Meatpacker Faces Charges Of Violating Child Laws." *The New York Times*, September 10, 2008, Section A; Column 0; National Desk; Pg. 16

<sup>3</sup>Paul Vitello. "Label Says Kosher; Ethics Suggest Otherwise." *The New York Times*, December 11, 2008, Section A; Column 0; Metropolitan Desk; Pg. 47

enforce quality, it would seem that kosher meat would adhere to a higher ethical standard than its secular counterparts. Let us not forget Hebrew National's famous advertisement claiming, "We Answer to a Higher Authority." The question this paper examines is whether the definition of "kosher" should include more than just affirming technical compliance with rules of slaughter of animals and handling of meat products. This paper argues that the designation of "kosher" should be expanded to include an ethical component which is not immediately evident from certain of the basic biblical textual sources for the laws of kashrut.

While there was a significant outcry among Jewish leaders to denounce the meat produced by Agriprocessors as un-kosher, a large number of Orthodox rabbis including the Orthodox Union, a kosher certification organization, were quick to point out that there is a difference between the production of kosher meat and the conditions in which it is produced.<sup>4</sup> These rabbis were advocating for kosher to be narrowly defined to dietary restrictions as opposed to be broadened to include religious restrictions on the treatment of workers, animal rights, and environmental sustainability. Speaking on a panel at an event at Yeshiva University dedicated to addressing the Agriprocessors scandal, Rabbi Avi Shafran declared that "Lapses of business ethics, animal rights issues, worker rights matters -- all of these have no effect whatsoever on the

kosher value."<sup>5</sup> This narrow standard misinterprets the ethical underpinnings of the kosher laws and ignores numerous other halakhah (Jewish laws) indicating that the conditions in which kosher food is produced is quite relevant to the ultimate designation of whether certain foods are kosher. If the definition of kosher is not expanded to include ethical conditions of production, then the very moral legitimacy that kosher food embodies is in jeopardy and there will be little incentive for kosher food producers such as, Agriprocessors to change their reprehensible behavior.

In order to properly debate the expansion of the definition of kosher, it is important to be clear on what the word exactly means. Kosher is a Yiddish term derived from the Hebrew word that means "fit" or "proper."<sup>6</sup> What exactly constitutes "proper" is vague and the word "kosher" can be applied to more than just food - such as Torah scrolls, other religious implements and even clothing, all of which have to adhere to strict standards, or be "properly" fashioned and maintained in order to be fit for use under Jewish law.

Kosher is within the umbrella of the more general term known as halakhah. Halakhah is a set of rules or laws that dictate the appropriate way to live one's life.<sup>7</sup> Halakhah finds its origins in both the Torah and the Talmud. The halakhah regulating food and the Jewish diet are primarily found in two of the

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<sup>5</sup> Ibid

<sup>6</sup> Irving Welfeld. *Why Kosher? An Anthology of Answers*. (Northvale: Jason Aronson Inc., 1996), 3

<sup>7</sup> Robert Goldenberg. "Talmud." In *Back to the Sources*, edited by Barry W. Holtz. (New York: Simon & Schuster Paperbacks, 1984), 138.

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<sup>4</sup> Ibid

five books of the Torah, Exodus and Leviticus. Some of the more prominent and well known dietary restrictions include the specific types of food that are permissible to eat and the proper way to cook and consume them. In Exodus 23:19, the cooking of meat and dairy products together is prohibited due to the passage stating, “Do not cook a young goat in its mother's milk.” Leviticus 11:1-8 delineates the specific types of animals that are appropriate for consumption. The general standard is that of all the animals on earth, Jews “may eat any animal that has a split hoof completely divided and that chews the cud.”<sup>8</sup> The animal must, however, have both split hoofs and chew its cud, not just one or the other. Therefore, since pigs have cloven hoofs, but do not chew their cud, the Torah states in Exodus 11:8 that, “You must not eat their meat or touch their carcasses; they are unclean for you.” The laws prohibiting the consumption of pork and cheese burgers are well known, but there some relatively less well known dietary laws. According to Leviticus 22:28, Jews are prohibited from killing an animal and its young on the same day. Additionally, Leviticus 17:13-14 states that any animal killed in a hunt must have its blood drained and then covered with dust because “the life of every creature is its blood.” Thus, the animal’s blood represents its life and similar to humans, must be respectfully buried. Failure to follow these rules regarding slaughter of mother and offspring or handling of blood after slaughter will render otherwise kosher meat nonkosher.

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<sup>8</sup> Leviticus 11: 3

Although the kosher dietary laws seem rigid due to their specific focus on minute details, they are underpinned by a code of ethics. The text of dietary halakhah range from vague to clear, but each rule is replete with a sub-surface meaning. Although we cannot pretend to know the will of God, we often interpret the simplest of sentences to have deeper meanings. According to Exodus, God prohibits us from boiling a goat with the milk from its mother. This law has been expanded to cover all forms of meat and dairy, regardless of origin of the milk, hence the prohibition of eating cheeseburgers and chicken parmesan. The law, however, has a deeper meaning than describing a certain cooking practice. Legendary Talmudic scholar, Ibn Ezra, declares that such an act implies extreme barbarism and that God is stressing the quality of humanism by outlawing such actions.<sup>9</sup> Additionally, the prohibition of killing an animal and its young on the same day, according to biblical commentator, Nachmanides, is intended to “eradicate cruelty and pitilessness from man’s heart...These precepts regarding bird and beast are not motivated by pity for the beast but are decrees of the Almighty to cultivate good moral qualities in man.”<sup>10</sup> God does not specifically state in the Torah that the prohibition of combining milk and meat and killing an animal and its child on the same day are intended to promote morality. Rather, halakhah possess deeper meanings than what the text can provide on the surface.

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<sup>9</sup> Welfeld, *Why Kosher?* 129

<sup>10</sup> Ibid

Ibn Ezra and Nachmanides both hold that within each kosher dietary law, there is an implicit lesson of ethical behavior. These ethical underpinnings of halakhah, have led to an understanding that eating kosher food sates our soul as well as our hunger. Observing the kosher laws elevates the ordinary experience of eating to something higher as a result of our efforts to add spirituality to our lives through what and how we eat.<sup>11</sup> Ibn Ezra notes that even the relatively well known laws prohibiting the consumption of certain species of animals and insects is done to purify our soul and conscience from consuming nasty things. Ibn Ezra asks, "How can one have a pure clean conscience with the knowledge that his own flesh is the product of a diet of insects, snakes, and other vermin?"<sup>12</sup> Ibn Ezra's concern with a "pure clean conscience" implies that the dietary halakhah are meant to safeguard our spiritual health. This can logically be extended to foods produced in a manner that would offend the holy spirit within us. The holy spirit is threatened by engaging in morally reprehensible behavior such as eating unclean beasts that are "defiling in thought and deed."<sup>13</sup> If it is the defilement of the holy spirit that we fear, then we should not be so narrow in characterizing what threatens it. If the thought of eating swine may seem defiling, then why is the thought of eating chopped meat prepared by illegal

immigrant children who work in unsafe conditions any less defiling?

Scholar Nechama Leibowitz questions what exactly results in a person's "saintly character." She asks why one's diet should have more effect on one's saintliness than his devotion to Torah or good deeds?<sup>14</sup> This important question supports the argument to enlarge the definition of kosher by noting that it is hard for any one person or rabbinic authority to prove that God favors dietary rules over his rules against the exploitation of one's neighbor. A debate over midrash (rabbinic interpretations) that favors dietary rules over labor regulations or vice versa could go on forever and does little to actually address the issue at hand, which is to ensure that the kosher food consumed by Jews is in line with the necessary standards laid down by God. Rather than debate over how narrow the standards should be, the Orthodox Union and other kosher supervision agencies should err on the side of safety and incorporate other important and relevant halakhah in their criteria for kosher certification. These organizations are exceedingly zealous in pursuing their goal to verify that Jews are strictly following God's commandment to not eat certain foods, to the point that units and subunits of food are closely examined as part of the kosher certification process. As an example of the level of scrutiny employed, the Orthodox Union's website mentions that "cereal may be non-kosher because it has raisins which are coated with a non-Kosher, animal-

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<sup>11</sup> The United Synagogue of Conservative Judaism. "Kashrut: Connecting the Physical to the Spiritual." 2008.

<http://www.uscj.org/Kashrut5091.html>

<sup>12</sup> Welfeld, *Why Kosher?* 55

<sup>13</sup> *Ibid*, 56

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<sup>14</sup> *Ibid*, 58

based glycerin.”<sup>15</sup> Granted, the Orthodox Union should be lauded for their pious attention to detail, but the focus of their investigations should be that basic halakhah must be first adhered to and then the minutia investigated second. Presumably, a kosher supervisor, also known as a mashgiah, would immediately refuse to certify a food processing plant if he noticed that pork and beef were mixed into hotdogs and would not need to check to see if the beef that was being mixed with pork came from properly slaughtered cows. If there is a prima facie violation, then there is no real need to check on the minutia. As in the case of Agriprocessors, the exploitation of the company’s workers blatantly conflicts with halakhah regulating labor. If the primary goal is to ensure that food production is to be done in line with specific halakhah, then clear violations of halakhah that relate to food production such as unsafe, illegal or exploitive working conditions should take precedence over examining individual raisins. Because no one can truly know God’s will and intent in imposing the laws of kashrut, if one is concerned with assuring that halachic standards are scrupulously met, that person should argue in favor of an expansive definition of “kosher” which includes a notion of ethical correctness. To take the other position would be to risk certifying as “kosher” something that might not be.

The relevance of applying the conditions in which kosher food is

produced to the ultimate designation of whether certain foods are kosher is not without precedent. In an editorial to the New York Times responding to the Agriprocessors scandal, Rabbi Shmuel Herzfeld of Ohev Sholom - The National Synagogue, cites that Yisroel Salanter, the great 19th-century rabbi, is famously believed to have refused to certify a matzo factory as kosher on the grounds that the workers were being treated unfairly.<sup>16</sup> Rabbi Salanter’s conduct finds its foundation in basic halakhah regarding the treatment of strangers and workers. The Federal criminal complaint charges Agriprocessors with mistreatment of its immigrant workers, especially the exploitation of minors. These actions contravene the dictum in Leviticus 19:33-34 that, “when a stranger resides with you in your land, you shall not wrong him. The stranger who resides with you shall be to you as one of your citizens; you shall love him as yourself, for you were strangers in the land of Egypt: I the Lord am your God.” The illegal immigrants working in the Agriprocessors plant were strangers to our country and were exploited for financial gain. The Torah is clear that such conduct violates the basic rights of a laborer. Deuteronomy 24:14 states, “Do not take advantage of a hired man who is poor and needy, whether he is a brother Israelite or an alien living in one of your towns.” Thus, the halakhah is clear that certain labor standards must be upheld and that the relationship

<sup>15</sup> Orthodox Union. “What is Kosher?” <http://www.oukoshers.org/index.php/basics/what>

<sup>16</sup> Shmuel Herzfeld. “Dark Meat.” *The New York Times*, August 6, 2008, Section A; Column 0; Editorial Desk; OP-ED Contributor; Pg. 23

between an employer and employee must not be one where the powerful exploits the weak.

Halakhah concerning labor standards hold that local customs defining working conditions are controlling in Jewish law. The Mishnah in Bava Metzia 7:1 states that, "One who hires employees and instructs them to begin work early and stay late – where it was not the custom to begin early and stay late, he may not require them to do so...All in accordance with the local custom."<sup>17</sup> This rule can be interpreted as intending to ensure that workers do not feel exploited because they are being treated according to their reasonable expectations of fairness. Agriprocessors' treatment of their workers was in direct violation with federal and state labor laws, which would then make them in violation of halakhah that command adherence to local law.

As the nation's largest kosher meatpacking company, Agriprocessors' reprehensible conduct threatens the moral legitimacy that the kosher designation provides. When something is designated kosher, it is given a higher and spiritual status because it is judged to be prepared in a manner consistent with the will of God. Agriprocessors' behavior contravenes so many spiritual and secular laws that it has contributed to the sentiment that this year, "kosher meat has become a different type of symbol, one not of mourning and spiritual devotion but of ridicule,

embarrassment and hypocrisy."<sup>18</sup> By allowing Agriprocessors to maintain their kosher designation the Orthodox Union undermines the moral legitimacy that comes hand in hand with kashrut. Religious devotion to the implicit lessons of ethical behavior within halakhah must not be replaced with the incentive to maintain profits by applying a textual definition of kosher along the narrow standard of dietary restrictions. The narrow standard of kashrut excludes other relevant halakhah, which then creates a situation where something may be called kosher when in fact it is in violation of other laws that mandate the ethical treatment of workers.

Claiming something is kosher when it is not could perhaps be considered an act of *hillul hashem*, or the desecration of the Lord's name. *Hillul hashem* is one of the worst sins a Jew can perpetrate as it conflicts with God's commandment in Exodus 20:4 "to not misuse the name of the LORD your God, for the LORD will not hold anyone guiltless who misuses his name." Designating an item of food as kosher is a statement that the food essentially has God's seal of approval because it complies with halakhah laid down by God himself. This view is supported by Chaim Milikowsky, the chair of the Talmud department at Bar Ilan University, who holds that a plant performing acts that violate halakhah mandating the ethical treatment of animals, or in this case workers, is "guilty of *hillul hashem*--the desecration of God's name--for to insist that God cares only about his ritual law and not

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<sup>17</sup> Rabbi Avram Israel Reisner. "Hekhsher Tzedek: Al Pi Din." The Hekhsher Tzedek Commission of the Rabbinical Assembly and the United Synagogue of Conservative Judaism, (January 31, 2008), 3

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<sup>18</sup> Ibid

about his moral law is to desecrate His Name.”<sup>19</sup> An expansive definition of kosher would solve the problem of offending God by incorporating all relevant halakhah in the decision-making process of designating something kosher.

Agriprocessors, however, is not the only one at fault here. Supporting Agriprocessors by designating their food as kosher or purchasing their products is tantamount to aiding and abetting violations to halakhah, which is prohibited by the halakhah that forbids the purchase of stolen goods. Choshen Mishpat 356:1 of the Shulchan Arukh specifically states that, “It is forbidden to purchase a stolen article from a thief. This is a great sin, for one supports the hands of sinners and causes him to steal other things, for if he does not find a buyer he will not steal.” Agriprocessors, through their influence and massive control over the kosher food market, have effectively stolen the kosher designation. Due to Agriprocessors’ massive market share, it would be a huge blow to observant Jewish families and the kosher food industry if their meat lost its kosher status. The hardship created by stripping Agriprocessors of their kosher designation, however, does not outweigh the halakhic dictate to not support wrongdoers.

The commonly employed narrow standard of kashrut fails to attach the importance of the ethical underpinnings of the kosher laws. The dietary kosher laws are replete with

implicit lessons on ethical conduct and precluding the definition of “kosher” to incorporate halakhah reasonably relevant to a kosher designation such as the treatment of workers undermines the very basis of kashrut, which is to be “proper” in the eyes of God. If the definition of kosher is not expanded to include ethical conditions of production, then the very moral legitimacy that kosher food embodies is jeopardized. The continued support for Agriprocessors’ products amounts to aiding and abetting violations of halakhah and perhaps even rises to the level of a *hillul hashem*. An expansive definition of kosher would solve the problem of offending God by incorporating all relevant halakhah in kosher designations and would reestablish the *hekhsher*, or kosher symbol, as a badge of ethics and spiritual devotion; a designation that the product is truly proper in God’s eyes.

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<sup>19</sup> Aaron Gross. “When Kosher Isn’t Kosher.” *Tikkun*, March 1, 2005, Vol. 20, Issue 2, 4



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